HIGH COURT OF DELHI : NEW DELHI

% Date of Decision : August 30, 2007

W.P(C)No.1698/2003

University Grants Commission & Anr. .....Petitioner
! Through: Mr. Amitesh Kumar, Advocate

versus

$ Shri N.D. Gupta & Anr. ..... Respondent
^ Through: Mr. V.S.R. Krishna, Advocate

And

W.P(C) No. 1694/2003

University Grants Commission & Anr. .....Petitioner
! Through: Mr. Amitesh Kumar, Advocate

versus

$ Shri Pramod Kumar & Anr. ..... Respondent
^ Through: Mr. V.S.R. Krishna, Advocate

And

W.P(C)No.1688/2003

University Grants Commission & Anr. .....Petitioner
! Through: Mr. Amitesh Kumar, Advocate

versus

$ Shri Anil Kumar & Anr. ..... Respondent
^ Through: Mr. V.S.R. Krishna, Advocate

***CORAM:**

HON'BLE MR.JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest? Yes

A.K.SIKRI, J.

1. The short question involved in this Writ Petition is as to whether it is incumbent upon the part of the Petitioner/University Grant Commission to give a copy of the inquiry report to the delinquent employee and thereby calling for his explanation, before the Disciplinary Authority agrees and concurs with the findings of the Inquiring Officer when the Rules are silent in this behalf. This was the issue which arose in all the three petitions before the learned Central Administrative Tribunal, Principal Bench, New Delhi. The three Respondents faced departmental proceedings wherein Inquiring Officers held the charges to be proved. On the basis of the reports of the Inquiring Officer, show cause notice was served upon the Respondents, inter-alia, stating that Disciplinary Authorities had agreed in the findings of the Inquiring Officers and the

Respondents were called upon to show cause as to why the proposed punishments be not imposed upon them. For sake of convenience we reproduce the said show cause notice in the case of N.D. Gupta :

> "Whereas Articles of charges were issued/framed against you on the basis of Statement of allegations duly served upon you dated 23.08.1996.
>
> Whereas your reply to the same was not found satisfactory, as such Disciplinary Inquiry was constituted against you and Shri P.K. Sharma was appointed as Inquiring Authority to inquire into the charges/allegations.
>
> Whereas the Inquiring Authority after recording the evidence concluded the enquiry and has submitted his report/findings on allegations and charges framed against you.
>
> The copy of report of Inquiring Authority dated 05.02.1999 is enclosed herewith.
>
> Whereas I have considered the report of the Inquiring Authority as well as the record of the Enquiry proceedings alongwith all the relevant documents, and I concur with the findings of Inquiring Authority.
>
> Now that in view of the fact that I agree with the findings of Inquiring Authority who has held you guilty of all the charges levelled against you and keeping in view the gravity of proved charges of misconduct, I propose to impose on you the punishment of dismissal from the services of UGC.

You are hereby called upon to show cause within 15 days of receipt of this letter, as to why the proposed punishment should not be imposed upon you.

In case you fail to show cause within the above time granted, it shall be presumed that you have nothing to submit against the proposed punishment and we shall proceed in the matter without any further reference to you, which please be notice.

Sd/-
Disciplinary Authority

Encl.: as above."

2. After receipt of the replies which were sent by Respondents to the respective show cause notice, they were imposed the penalty of dismissal. Order dated 26.4.1999 passed in the case of N.D. Gupta reads as follows:

"This is in reference to the above mentioned show cause notice vide which you were called upon to submit your reply as to why the proposed punishment of dismissal from services of UGC maynot be imposed upon you. A copy of inquiry report was supplied to you alongwith the show cause notice.

Whereas you filed a detailed reply dated 05.04.1999 to the show cause notice.

That I am seized of the facts of the case and have also considered your reply dated 05.04.1999 against the proposed punishment.

However, your reply in the show cause notice is found unsatisfactory.

> I, therefore, impose upon you the punishment of your dismissal from the services of the UGC with immedite effect."

3. It is clear from the aforesaid show cause notice and the order passed, that the Disciplinary Authority did not give the copy of the report to the delinquent employee before agreeing with the findings of the Inquiring Officer, thus they were not given any opportunity to make their submissions to the findings arrived at by the Inquiring Officer. After the receipt of the report, Disciplinary Authority had concurred with the findings and had proposed the punishment of dismissal from service, Show Cause Notice was limited to this proposed punishment only. It is also manifest that after the receipt of the reply, the said reply was considered only in the context of the proposed punishment and was found to be unsatisfactory, thereby leading to imposition of the punishment of dismissal. This action on the part of the Petitioner herein is held to be violative of principles of natural justice and Articles 14 and 16 of the Constitution of India by the learned Central Administrative Tribunal vide its judgment dated 13.1.2003, which is a common judgment in respect of all the three employees. For arriving at this conclusion, the learned Tribunal has referred to and relied upon the judgment of the Supreme

Court in the case of ***Managing Director, ECIL, Hyderabad vs. B. Karunakar***, (JT 1993 (6) SC 1). Following passage from that judgment is also extracted, emphasizing the importance of the supply of the inquiry report in the Disciplinary Proceedings:

> "In the view that we have taken, viz., that the right to make representation to the Disciplinary Authority against the findings recorded n the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (Supra) should apply to employees in all establishments whether Government or non- Government, public or private. This will be the case whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the Disciplinary Authority records its findings on the charges levelled against him."

4. The learned Tribunal has also relied upon another judgment of the Supreme Court in the case of ***State of U.P. Vs. Harendra Arora & Another***, 2001 (6) SCC 392 wherein Apex Court expressed the need for supply of inquiry report, relating it with the prejudice which would be caused otherwise. Thus, the ratio of this case is that incase the inquiry report is

not supplied before the decision is taken to concur with the findings of the Inquiring Officer, it would result in prejudice in the charge sheeted employee. On this basis, the action of the petitioners was quashed.

5. Submission of Learned counsel for the Petitioner herein, which was raised before the Tribunal as well, to the effect that there was no such requirement in the regulations of the Petitioner framed in this behalf, was brushed aside by the Tribunal holding that the judgment in ***Managing Director, ECIL (Supra),*** categorically stipulates that requirement of serving the show cause notice is mandatory, and therefore notwithstanding those regulations, it was incumbent upon the Disciplinary Authority to serve a copy of the inquiry report to the delinquent employee and extract his response thereto and thereafter only he could take the decision whether or not to agree with the findings contained in the inquiry report.

6. Learned counsel for the Petitioner submits that as per Regulation 4 of The UGC Employees (Classification, Control and Appeal) Regulations, 1967, the only requirement was to serve a notice to show cause against the penalty proposed to be imposed, and this was duly complied with. To buttress this submission he referred to the Regulation 14(4) of the said

Regulations which is to the following effect:

> "(4) (i) if the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 10 should be imposed on the employee, it shall -
>
> (a) furnish to the employee a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an Inquiring Authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the finding of the Inquiring Authority;
>
> (b) give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under regulation 13.
>
> (ii) the Disciplinary Authority shall consider the representation, if any, made by the employee in pursuance of the notice given to him under clause (i) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit."

7. He submits that as per clause (b) aforesaid, the employee was to be given notice of the proposed punishment, and the procedure as contained therein was duly complied

with. His further submission was that the Tribunal wrongly relied upon the judgment in the case of ***M.D. ECIL (Supra)*** as the statement of law laid down therein was in the context of Civil Servants governed by Article 311 of the Constitution of India. His submission was that the entire controversy, which arose therein related to Article 311(2) 1st Proviso, as amended by the 42nd amendment to the Constitution, and the Court considered the question as to whether after the said amendment, there was any necessity of serving the inquiry report upon the delinquent.

8. This submission of Learned counsel for the Petitioner is ill founded. It would be clear from the very first paragraph of the aforesaid judgment, that the Supreme Court dealt with a group of matters, which were filed at the instance of various parties namely, Union of India, Public Sector Corporations, Public Sector Banks, State Governments and, so much so, two private parties were also involved therein. In para 2 of the judgment, the court formulated the question which fell for consideration and question No.(i) and (iv) are as under:

> "i) Whether the report should be furnished to the employees even when the statutory rules laying down the procedure for holding the Disciplinary Inquiry are silent on the subject or are against it?

iv) Whether the law laid down in Mohd. Ramjan Khan Case, 1991 (1) SCC 588 will apply to all establishments Government or non-government, public and private sector Undertakings?"

9. The Supreme Court thereafter indulged into thread bare discussion of all the aforesaid questions not only with reference to Article 311, but on the touch stone of principles of natural justice and opined that where the inquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusion. It further held that the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report. It further held that the service rules/standing orders which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the

furnishing of the report or are silent on the subject. It was also held that it would not be appropriate to construe the failure of the employee to ask for the report as waiver of his rights by him where the employee asks for the report or not, the report has to be furnished to him.

It may not be necessary to discuss the law laid down in ***M.D., ECIL (supra)*** in detail, and our purpose would be served by reproducing the summation of legal principal contained in para 29 of the said judgment, as under:

> "Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

10. The Supreme Court also made it abundantly clear that this rule shall be applicable to not only Government employee but the employees of Public Sector Undertakings as well as the Private Sector Undertakings.

11. In the present cases the Inquiring Officers were

different from the disciplinary authority in all the three cases. The Rules are silent with regard to supply of inquiry report before taking decision by the Disciplinary Authority whether to agree with the findings of the Inquiring Officer as recorded in the inquiry report or not. As per the mandate of the aforesaid decision, a copy of the inquiry report has to be furnished even if Rules are silent, and non furnishing of the copy of the inquiry report is treated as breach of the principles of natural justice, and in turn amounts to infraction of Article 14 of the Constitution of India, as principles of natural justice are read into Article 14.

12. Learned counsel for the Petitioner sought to draw a distinction between the case of UGC and the judgment in ***M.D., ECIL (Supra)*** on the ground that employees of the UGC are not Civil Servant and therefore not governed by Article 311 of the Constitution of India. For this proposition he relied upon the following two decisions of Supreme Court;

"i) ***Dr. (Mrs.) Gurjeewan Garewal v. Dr. (Mrs.) Sumitra Dash & Ors.*** JT 2004 (Suppl.1) SC 140

ii) ***R. Vishwanathan Pillai vs. State of Kerala,*** (2004) 2 SCC 105."

13. In the first case, which related to the officials of the

Post Graduate Institute of Medical Education Research(PGIMER), the court held that its employees would not be the holders of Civil posts and therefore, cannot claim recourse to Article 311 of the constitution. There is no quarrel with this proposition of law. However, what the counsel for the Petitioner forgets is that the High Court in that case held the removal to be bad on the ground that no opportunity was given to the concerned employee, which according to the High Court, was in violation of Article 311. Thus, the mistake and error, which was committed by the High Court was to hold the termination of an employee of PGIMER as violative of Article 311 and thus bad in law, and in this background, the question that arose for consideration was as to whether the officials of PGIMER would be holders of Civil posts and Civil Service under Article 311 of Constitution of India. As pointed out above, in the present case the decision is not predicated on Article 311 but is founded on infraction of the principles of natural justice and Article 14 of the Constitution of India. Since UGS, which is a statutory body, is a State and other authority under Article 12 of the Constitution of India, its employees would have protection of Article 14 and 16 of the Constitution of India. In any case, the principle laid down in ***M.D., ECIL (Supra)***, as

pointed out above, is applicable even to employees of Private Sector Undertakings.

14. In ***R. Vishwanatha Pillai (Supra)*** as well, the question which fell for consideration is totally foreign to the present case and has no relevancy at all. In that case, the appellant had procured appointment in a post meant for a reserved category candidate on the basis of a false caste certificate. This appointment was secured with State of Kerala. The officials of State of Kerala would be Public Servants within the meaning of Article 311 and this is not in dispute. However, the question which fall for consideration was as to whether a person who has procured his appointment on the basis of a false caste certificate would be treated as holding a civil post within the meaning of Article 311. The court answered this in negative and on this premise it was held that such a person shall not be having protection of Article 311 and his services could be terminated without recourse to Article 311 as the appointment itself was procured on the basis of false documents.

15. In these circumstances, we have no hesitation in holding that the present petition preferred by the Petitioner impugning the judgment of the Tribunal, is totally

misconceived. The Tribunal has rightly held that the punishment of dismissal imposed upon the employees was violative of principles of natural justice applying the ratio of ***M.D., ECIL (Supra)*** and ***Harinder Arora (Supra)***. We may note that while setting aside the impugned penalty order, the Tribunal gave liberty to the Disciplinary Authority to continue with the proceedings further after endorsing a copy of the inquiry report and calling upon the Respondent to show cause, before taking a decision. Instead of doing so, the Petitioner rushed to this court, challenging the said decision. We therefore, dismiss this petition. However, in the facts of this case we leave the parties to bear their respective costs.

A.K.SIKRI, J.

VIPIN SANGHI, J.

August 30, 2007
P.K. BABBAR